IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1631 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DESAI AMRATBHAI BABABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1631 of 2004

MR RAKESH R PATEL for Appellant No.

MR HL JANI ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. Upon the request made by ld. advocate for the appellant Mr. Rakesh R Patel, the matter was heard

finally.

2. Ld. advocate for the appellant and ld. APP Mr. HL Jani were heard in respect of this appeal.

3. This appeal came to be filed under sec. 454 of the Code of Criminal Procedure against the judgment and order delivered by Special Judge, Fast Track Court, Patan on 12.9.2003 in Special (Atrocity) Case No. 67/2002. The present appellant was accused no. 1 in the said Special (Atrocity) Case No. 67/2002 and according to the allegation of the prosecution, one double barrel gun was found and seized in the possession of the present appellant which was given muddamal article no. 67 during trial. In the said trial, all the accused including the present appellant were acquitted by ld. Special Judge, Fast Track Court, Patan, vide above said judgment and order. However, ld. trial judge while dealing with muddamal article no. 67, which is double barrel gun came to the conclusion that the gun was required to be confiscated to the Government and was directed to be sent to the District Magistrate, Patan and, hence, being aggrieved by the above said order of the ld. trial judge, in respect of the muddamal article no. 67 double barrel gun, this appeal is filed by the appellant under sec. 454 of Code of Criminal Procedure.

4. Ld. advocate for the appellant stated that the appellant is licence holder of the said muddamal article no. 67 and he had in pursuance of licence purchased the said gun which was seized from his possession. Since the appellant has been acquitted, the muddamal article no. 67 ought to have been returned to appellant, instead of ld. trial judge passed an order to confiscate the same. Ld. APP Mr. Jani was also heard in this respect.

5. Having heard the ld. advocates for the parties, it clearly appears that there is some substance in the say of the appellant. During trial, it appears that no attempt was made to establish that appellant was entitled to have custody of said muddamal article no. 67 double barrel gun. An opportunity, therefore, is required to be given to the appellant for proving that the said muddamal article no. 67 is required to be returned to his custody.

6. In this view of the matter, in this appeal, part of the judgment and order impugned in this appeal, in respect of muddamal article no. 67 double barrel gun is set aside and it is directed that in view of sec. 452 sub-section (3) of Code of Criminal Procedure, concerned

Ld. Chief Judicial Magistrate shall deal with the muddamal article no. 67 double barrel gun and decide the issue in accordance with law.

7. In the result, this appeal is allowed to the above said extent and with above said observation. DS permitted.

(J.R. VORA, J.)
mandora/